other hand the writ has been allowed where there was no other claimant or occupant. *State* v. *Daggett,* 28 Wash. 1; *State* v. *Hewitt,* 3 S. Dak. 187; *Metsker* v. *Nealey,* 41 Kan. 122; or there was merely a pretended retention of the office. *People* v. *Kilduff,* 15 Ill. 492. It has also issued to compel the recognition of an officer until the title could be properly determined. *In re Delgado,* 140 U. S. 586; *Keough* v. *Aldermen,* 156 Mass. 403. Where other remedies involved delay or were inadequate the writ has been held proper to try the title to office in several states. *Morton* v. *Broderick,* 118 Cal. 474; *Harwood* v. *Marshall,* 9 Md. 81; *State* v. *Jaynes,* 19 Neb. 161. Virginia and Wisconsin appear to have been even more liberal. *Sinclair* v. *Young,* 100 Va. 284; *State* v. *Oates,* 86 Wis. 634.

[Recent press dispatches report that, on appeal, ex-Mayor Schmitz has been held not guilty. The state may now carry the case to the supreme court of California, which held in the principal case that his appeal, then pending, did not affect its decision.]

NAVIGABLE WATERS—RIGHT OF ACCESS BY RIPARIAN OWNER.—Appellant is the riparian owner along the west bank of the Mobile River, and had constructed wharves and piers in front of its land bordering on the river and within the city of Mobile. The appellee city was about to fence off the shore and deprive appellant of any access to the river and of the use of its improvements. Appellant filed a bill to enjoin such interference. *Held,* the state holds the shores and beds of navigable streams in trust for the public; but riparian owners have a special property right as such, and have the right to dock out, subject to the rights of navigation and the rules of public control. *Mobile Transportation Co.* v. *City of Mobile et al.* (1907), — Ala. —, 44 So. Rep. 976.

Under the old common law any structure built over navigable water was removable as a purpresture, i. e., an invasion of the sovereign's private property in the bed of a navigable stream. *Shively* v. *Bowlby,* 152 U. S. 1; GOULD, WATERS, § 167. This doctrine, however, has been departed from in most of the states. In *People* v. *Mould,* 37 N. Y. App. Div. 35, it is said that the state holds the title to lands under water in trust for the public, and that the public derives benefit from the erection of wharves. The best reason for abandoning the English rule is given as the basis for the decision in *Trustees, etc., of Brookhaven* v. *Smith,* 188 N. Y. 74. It is there argued that the right to wharf out is a necessary part of a right of access to navigable water, and that the old purpresture doctrine would so hinder commerce that it has become inapplicable to American conditions. The decision in the principal case is supported by similar reasoning. In some jurisdictions, however, the purpresture doctrine is still recognized. *Revell* v. *People,* 117 Ill. 468.

PARTY WALLS—CONTRIBUTION BETWEEN ADJOINING OWNERS TO COST OF ERECTION.—Two buildings on adjoining lots were divided by a party wall. Subsequently plaintiff's vendors, the owners of one lot and building, extended the division wall at their own expense and under no agreement with the

adjoining owner. The latter afterward conveyed to defendant, who extended his building and utilized the extension of the wall. *Held,* a person who uses a wall erected on the dividing line by the owner of an adjacent lot should pay a reasonable price for the use thereof, even though neither he nor his vendor made any agreement, express or implied, concerning it. *Spaulding et al.* v. *Grundy* (1907), — Ct. App. Ky. —, 104 S. W. Rep. 293.

There are statutes in some jurisdictions which compel contribution by one who uses a wall erected on the dividing line by an adjoining owner, but no such statute exists in Kentucky. In the absence of both such a statute and of an agreement to contribute, the general rule is that one who makes use of a wall, erected by another and standing in part on his land, is under no obligation to contribute. *Allen* v. *Evans,* 161 Mass. 485; *Sherred* v. *Cisco,* 6 N. Y. Sup. Ct. 480; *Preiss* v. *Parker,* 67 Ala. 500; *List* v. *Hornbrook,* 2 W. Va. 340; *McCord* v. *Herrick,* 18 Ill. App. 423; *Orman* v. *Day,* 5 Fla. 385; note to *Bloch* v. *Isham,* 92 Am. Dec. 289. The court, in the principal case, reaches its equitable conclusion by expressly brushing aside any inquiry into the distinctions involved in the law of party walls and the law of covenants running with the land as it bears on party walls, and bases its decision on reason and justice. The decision finds authority, however, in *Campbell* v. *Mesier,* 4 Johns. Ch. 333; *Day* v. *Caton,* 119 Mass. 513; *Sanders* v. *Martin,* 2 Lea (Tenn.) 213; *Wilford* v. *Gerhard,* 22 Ky. Law Rep. 203.

PLEADING—RIGHT TO AMEND AFTER AFFIRMANCE ON APPEAL.—Plaintiff's original complaint set forth facts without separate statements of the causes of action, and sought different kinds of both equitable and legal relief. After hearing the testimony, the district court directed a verdict for the defendant. The plaintiff's alternative motion for judgment notwithstanding the verdict or for a new trial was denied. The plaintiff appealed and the supreme court affirmed the holding of the lower court directing a verdict for the defendant. After the cause had been remanded to the district court, the plaintiff moved to amend his complaint. The court allowed the amendment on terms and granted a new trial. This appeal was taken from the order granting plaintiff's motion. *Held,* that plaintiff's motion should have been denied, as it was too late to amend after affirmance on appeal. *Todd* v. *Bettingen* (1907), — Minn. —, 113 N. W. Rep. 906.

The decision in the principal case is based upon the ground that when the order of the trial court directing judgment for the defendant was affirmed, litigation in that case was at an end. The court, however, says, by way of dictum, that under exceptional circumstances (which it is maintained do not exist in the principal case), an amendment might be allowed even after affirmance on appeal. No cases on all fours with the principal case were found. Undoubtedly, the tendency of the courts is to follow the decision of the principal case. Amendments have often been allowed after trial and verdict which cause pleadings to conform with the proofs. *Thomas* v. *Hatch,* 53 Wis. 296, 10 N. W. 393; *Anderson* v. *Bank,* 5 N. D. 80, 64 N. W. 114. But such amendments are allowed because they sustain the judgment, not overthrow it. Amendments are allowed in the trial court after the judgment